

Hyman L. Schaffer  
 Fran M. Jacobs  
 Brian Damiano  
 1540 Broadway  
 New York, New York 10036  
 (212) 692-1000  
*Attorneys for Plaintiff Consist Software Solutions, Inc.*

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X	
CONSIST SOFTWARE SOLUTIONS, INC.,	:
f/k/a CONSIST INTERNATIONAL, INC.,	:
	:
Plaintiff,	:
-against-	:
	:
SOFTWARE AG, INC. and SOFTWARE AG,	:
	:
Defendants.	:
-----X	

07 CV 7047 (CM) (FM)

**DECLARATION OF HYMAN L. SCHAFFER IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE TESTIMONY BY DEFENDANTS' EXPERT WITNESS**

HYMAN L. SCHAFFER declares:

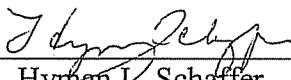
1. I am a member of the law firm of Duane Morris LLP, attorneys for plaintiff Consist Software Solutions, Inc. f/k/a Consist International, Inc. ("Consist" or "Plaintiff") in the above-captioned action. I submit this Declaration in support of Plaintiff's motion in limine for an order granting Plaintiff's motion to exclude the expert testimony of David A. MacSwain pursuant to Rules 403 and 703 of the Federal Rules of Evidence, and Rules 26(a)(2) and 37 of the Federal Rules of Civil Procedure, and for such other and further relief as the Court may deem just and proper.
2. The purpose of this Declaration is to put before the Court the documents which establish that Plaintiff's motion in limine to exclude Mr. MacSwain's testimony should be granted in its entirety.
3. A true and correct copy of the MacSwain report is annexed hereto as Exhibit A.

4. A true and correct copy of an e-mail dated December 4, 2007 from James D. Jacobs to me is annexed hereto as Exhibit B.

5. A true and correct copy of an excerpt from the deposition testimony of David MacSwain is annexed hereto as Exhibit C.

Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Dated: New York, New York  
December 7, 2007

  
Hyman L. Schaffer